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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917

No. 340

GEORGE W. JONES, APPELLANT,

vs.
INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED DECEMBER 12, 1917.

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a Supreme Court of the District of Columbia.

In Equity. No. 34351.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
GEORGE W. JONES, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition.*

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

No. 34351. Equity.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
GEORGE W. JONES, Respondent.

To the Honorable, the Judges of the Supreme Court of the District of Columbia:

The Interstate Commerce Commission, the above names petitioner, brings this its petition against George W. Jones, of Montgomery, Alabama, the above-named respondent, and says:

That your petitioner is an administrative tribunal organized and existing under and by virtue of an Act of Congress entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended;

That the said George W. Jones is and has been for twenty years an attorney for the Louisville & Nashville Railroad Company, and in that capacity an official of that corporation;

That the said Louisville & Nashville Railroad Company is a corporation organized and existing under the laws of the State of Kentucky, and operates as a common carrier and engages in interstate commerce:

That by section 1 of said Act it is provided that all charges for the transportation of passengers and property shall be just and reasonable;

2 That by Section 15 of said Act the Commission is
1—814

authorized and empowered to determine and prescribe what shall be the maximum, just and reasonable rates or changes to be observed by interstate carriers, and what regulations or practices are just, fair and reasonable and to prescribe the same;

That by section 12 of said Act the Commission is given authority to inquire into the management of the business of common carriers, and keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from such carriers full and complete information to enable the Commission to perform its duties;

That by section 13 of said Act the Commission may at any time institute an inquiry on its own motion in any case and as to any matter or thing concerning which a complaint is authorized to be made, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act;

That by section 20 of said Act the Commission is authorized to require from said carriers detailed accounts of all their expenditures and revenues, and a complete exhibit of their financial operations, and further, the Commission is authorized to prescribe the forms of any and all accounts, records, and memoranda to be kept by the carriers;

That in pursuance of the authority given it by the Act to Regulate Commerce, the Interstate Commerce Commission has prescribed and published forms for any and all accounts to be kept by
3 carriers subject to the provisions of the Act to Regulate Commerce;

That by section 21 of said Act the Commission is required to make a report to Congress each year, containing information and data collected by the Commission as may be considered of value in determining questions connected with the regulation of interstate commerce;

That by section 12 of said Act the Commission is empowered to require by subpoena the attendance and testimony of witnesses, and the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses;

That a resolution of the United States Senate adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof, and report to the Senate as soon as practicable upon certain practices and financial relations of the Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway and other carriers, which resolution is set out in the order of the Commission of date November 10, 1913, hereinafter described;

That thereafter the Commission instituted a proceeding of inquiry and investigation and in that action made and duly served upon the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway and other carriers, the order of November 10, 1913, and certain supplemental orders which are attached hereto as Appendix A of this petition;

That on December 9, 1915, a petition before the Interstate Com-

4 merce Commission was filed by Luke Lea, Esq., alleging that the Louisville & Nashville Railroad Company, and the Nashville, Chattanooga & St. Louis Railway had by the issuance of free transportation to certain passengers unreasonably discriminated against interstate commerce, that the free passes given certain persons and denied others constituted an undue preference to those persons given free passes, and that free intrastate transportation given certain persons who were shippers constituted a purchase of traffic from such pass users, in violation of the Act to Regulate Commerce, and prayer was made that the Commission should make an order requiring the carriers named to cease and desist from giving such free transportation;

That by the Commission's order of date March 20, 1916, the petition of Luke Lea, Esq., was consolidated for hearing with the proceeding instituted in response to the Senate Resolution, a copy of said order being attached to this petition as a part of Appendix A.

That thereafter, to wit, on the 27th day of April in the year 1916, the said Commission, pursuant to said orders, held a hearing presided over by Commissioner B. H. Meyer, within the jurisdiction of this court, for the purpose of examining and inquiring into the matters and things above set forth;

That at said hearing in response to a subpoena served upon him, George W. Jones, above respondent, appeared;

That after being duly sworn he stated that he was an attorney of the Louisville & Nashville Railroad Company, and had been a District Attorney about eight years and Assistant District Attorney prior to that time for several years, whereupon he said George W. Jones was asked certain questions which he was directed by the presiding Commissioner to answer, but upon advice of counsel
5 he refused to answer said questions or any of them;

That the said questions the witness refused to answer together with the reasons advanced and other pertinent and explanatory matters are as follows:

GEORGE W. JONES was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Folk: Your full name?

Mr. Jones: George W. Jones.

Mr. Folk: Where do you live?

Mr. Jones: Montgomery, Alabama.

Mr. Folk: What is your occupation?

Mr. Jones: I am a lawyer.

Mr. Folk: Are you an attorney for the Louisville & Nashville Railroad Company?

Mr. Jones: Yes, sir: the Louisville & Nashville Railroad Company is one of my clients.

Mr. Folk: Are you a district attorney or local attorney?

Mr. Jones: District attorney.

Mr. Folk: For the State of Alabama?

Mr. Jones: Yes, sir.

Mr. Folk: How long have you been an attorney for the Louisville & Nashville Railroad in Alabama?

Mr. Jones: I have been District Attorney, I think, about seven years,—eight years; Assistant District Attorney prior to that time for several years; I suppose I might say I have been an attorney for the company something like twenty years.

Mr. Folk: What are your duties as District Attorney, to try cases?

Mr. Jones: That is part of my duty, yes, sir; and general supervision of the litigation in the district under the supervision of the General Counsel and General Solicitor and General Attorney.

Mr. Folk: And to look after the welfare of the road generally?

Mr. Jones: Well, I think that is the duty of everyone working for an institution, to look after its welfare.

Mr. Folk: Do you recall having a number of articles published in newspapers of Alabama in 1912 during the campaign there for lower rates?

Mr. Jouett: If your honor please, this is the first official of the company who has been placed on the stand in this examination—

Mr. Folk: Wait until I ask one more question before you object.

I will ask you, Mr. Jones, if you distributed in the State of Alabama on behalf of the Louisville & Nashville Railroad, campaign funds favoring the election of a certain candidate?

Mr. Jouett: Now, if your honor please, as I started to say, Mr. Jones is the District Attorney for the Louisville & Nashville Railroad Company; he is the official of the company who has charge of its affairs in the State of Alabama. I have made objection on behalf of the Louisville & Nashville Railroad to any evidence in regard to the first twelve paragraphs in this investigation, upon the ground that there is no authority in the Commission under any act of Congress or any other law to consider these subjects. Particularly is that true, according to our view, with reference to the twelfth paragraph, which covers or calls for information with reference to campaign contributions and other matters of a like political nature.

Now, because of this view that we entertain about it, I desire to object to the witness answering this question.

Mr. Folk: Do you wish to instruct the witness not to answer it?

Mr. Jouett: I want to see what his honor does with my objection first. I desire first to object to this witness giving any answer to the question which has just been asked by Governor Folk.

Chairman Meyer: And for the purpose of the record and on behalf of the Commission, I shall have to instruct the witness to answer.

Mr. Jouett: With entire respect to the Chairman and to the entire Commission, I advise the witness not to answer the question.

Mr. Folk: Do you accept the advice?

Mr. Jones: Yes, sir.

Mr. Folk: You do?

Mr. Jones: Yes, sir.

Mr. Jouett: Under advice of counsel you decline to answer?

Mr. Jones: Under advice of counsel I decline to answer.

Mr. Folk: I show you a letter dated September 12, 1912, addressed to you from President Smith of the Louisville & Nashville Railroad, and ask you if you recall having received that letter.

Mr. Jouett: We object to the witness answering that question. For the sake of the record, you may consider it as read into your question, Governor.

Mr. Folk: All right.

Mr. Jouett: I also give the witness the same advice as to his answer.

Mr. Folk (reading):

"September 12, 1912.

Geo. W. Jones, Esq.:

"Herewith certain memorandums which may be used to advantage.

"The campaign will be a long one, and I advise that instead of making a comprehensive answer to Comer's emanations, that one point be covered at a time—made as brief as possible and disseminated one at a time. We did this quire effectively in 1884-85. Puncture one error at a time, and possibly create an interest in future punctures. I do not give specific instructions, but leave the conclusion as to what is best to you and your associates. These memorandums if used need not in any way interfere with anything that Mr. Bowie or others may do.

"It may be best to publish without a responsible signature. If a pen name is desired, I suggest "Irulus." If deemed best, publish over my signature. In any event I will be responsible.

"Yours truly,

"—— —, *President.*

(Copy—not signed.)

9 Mr. Jouett: You make the same answer?

Mr. Jones: I make the same answer under advice of counsel.

Chairman Meyer: I do not know that it will be necessary to make a separate ruling in each case, but the ruling, of course, will be the same; the witness will be instructed to answer.

Mr. Jouett: And I will make the same objection and give the same advice to the witness.

Mr. Folk: I show you a letter dated June 11, 1912, to Colonel H. L. Stone, General Counsel. This letter purports to be signed by yourself. I will ask you to examine this copy and state whether or not it is a copy of an original letter that you wrote.

Mr. Jouett: I make the same objection to this question and give the same advice to the witness.

Chairman Meyer: And the same instructions from the Commission.

Mr. Jones: The witness gives the same answer.

Mr. Folk (reading):

"June 11, 1912.

"Alabama Rate Litigation.

Col. H. L. Stone, General Counsel, Louisville, Ky.

"DEAR SIR: Your letter of June 10 bearing upon the communication of Judge Thorington, the editorial in the Advertiser, etc.

10 "I have been urging Col. Gunter for several days to write an article along the lines suggested in your letter, and he has promised me to do so. I told him I would see to it that it was widely published in the State Press, if he would prepare it.

"In the meantime, under authority of the President's letter to me of the 10th inst., I am forwarding Judge Thorington's communication which appeared in the Advertiser of June 8, to a number of weekly papers requesting them to publish the same and send me their bills for the publication. I am by the same letter requesting them to reproduce the editorial in the Advertiser of the 7th inst., headed "The expected has happened." I have so worded my letter as to induce them, I think, to reproduce the editorial without pay. I enclose copy of the letter I am sending the editors.

"Yours truly,

(Signed)

GEO. W. JONES,

"District Attorney."

"Copy to Mr. M. H. Smith, Pres't."

I show you another letter dated June 11, 1912, purporting to be signed by yourself, and will ask whether or not you signed the original of that letter.

Mr. Jouett: I make the same objection and give the same advice to the witness with reference to that letter. I think it ought to be read, perhaps, before that is done, so it becomes part of your question.

Mr. Folk (reading):

"MONTGOMERY, ALA., June 11, 1912.

11 "DEAR SIR: I enclose herewith page 4 of The Montgomery Advertiser of June 8th, on which you will find a marked article entitled "Some of Comer's Statements Corrected," signed by Judge W. S. Thorington, the Special Master in one branch of the railroad rate litigation.

"If you will reproduce this article, I am authorized to pay you \$10.00 for its publication, on receipt of your bill.

"I also call your attention to an editorial which appeared in The Montgomery Advertiser in its issue of June 7th, headed, "The Expected has happened."

"It occurs to me that, if you have not heretofore reproduced this editorials, you might deem it of sufficient interest to your readers

to reproduce it in your next issue, and I am, therefore, enclosing you marked copy.

"Yours truly,
(Signed)

GEO. W. JONES,
District Attorney."

Mr. Jouett: I make the same objection with reference to that question, and give the same advice to the witness.

Chairman Meyer: The same ruling.

Mr. Jones: The same answer.

Mr. Folk: I show you a letter dated June 21st, 1912, addressed to Colonel H. L. Stone, purporting to be signed by yourself, and ask you whether or not you wrote the original of which that purports to be a copy. It is as follows:

"Col. H. L. Stone, General Counsel, Louisville, Ky.

12 "DEAR SIR: When Mr. Mapother was in this office a few days ago, I called his attention to the unhappy effect it had upon some of our country editors when they did not receive voucher promptly in payment of bills for publishing certain articles, and he authorized me to draw voucher in my favor for \$900.00 to take care of the bills that would be rendered by the papers to which we sent Judge Thorington's communication, offering to pay them \$10.00 each.

"Since that time, as you are aware, Col. Gunter's communication has appeared, and I am sending it out to the weekly press located on and contiguous to our lines and offering the editors \$20.00 each for its publication, hoping by that means to economize, since it would cost considerably more than that even at what the editors consider a cut rate,—five cents per line. The article amounts to 476 lines on ' editorial page of the Advertiser, and this, figured at 5¢ per line, would amount to \$23.80.

"On account of the heavy expense, and also on account of the fact that the Central of Georgia and the Western Railway of Alabama have also agreed to do some publicity work, I have thought it best to economize to the extent of only sending this communication to about 43 papers located on our lines, trusting that readers in other portions of the State may see it in the daily papers.

"In order to enable me to handle the bills for publication of Col. Gunter's article in the same manner as I am handling those of Judge Thorington's article, I have drawn voucher in my
13 favor for \$860.00, which I enclose herewith, and which I will thank you to approve and pass for payment, so that I may deposit the amount in the bank here to my credit and draw checks on it, as I am doing in the Thorington publication.

"While I will be in Baltimore a good portion of next week, still I will leave instructions for checks to be drawn as fast as bills come in, so that when I return I can sign the checks and remit for the bills that may be rendered before I return.

"I am enclosing herewith a list of newspapers to which we are

sending Mr. Gunter's communication, having eliminated from the list some of those who have commented unfavorably upon previous articles. I also enclose copy of mimeograph letter which I am using in sending Col. Gunter's article to the newspapers.

"Yours truly,
(Signed)

GEO. W. JONES,
"District Attorney."

I ask you to examine——

Mr. Jouett: If you have several of these letters, you can put them all in your one question.

Mr. Folk: I have already asked him the question in regard to this, whether or not he recognizes this as a copy of the original letter which he wrote.

Mr. Jouett: You did not wait for an answer.

Mr. Folk: I understood him to refuse.

Mr. Jouett: Nothing has been said about that letter, but I make the same objection and give the same advice to the witness.

14 Chairman Meyer: And I shall instruct the witness to answer.

Mr. Jones: The witness declines to answer on advice of counsel.

Mr. Jouett: I would suggest, if you care to, that you read into your question just as many as you want.

Mr. Folk: You make no objection by reason of these being copies.

Mr. Jouett: No, I will not object by reason of these being copies, but solely on the other ground.

Mr. Stone: We do not waive anything.

Mr. Folk: I show you letters appearing on pages 227, 228, 241 and 242, all purporting to be copies of letters either written to you or by you, and will ask you whether or not you recognize these copies as copies of original letters, either written by you or to you.

Mr. Jouett: How far did you say you go to, what pages?

Mr. Folk: 227, 228, 241 and 242.

Mr. Jouett: The letter on pages 230 and 231 is neither signed nor——

Mr. Folk: I did not say 231. I said 241.

Mr. Jouett: I thought you said straight through.

Mr. Folk: No. (Reading):

"BIRMINGHAM, ALA., July 22, 1912.

"Mr. Geo. W. Jones, Montgomery, Ala.

"DEAR GEORGE: In the Ledger today, former Governor Comer is quoted in his Oneonta speech as follows:

15 "Governor Comer declared that Geo. W. Jones, District Counsel of the Louisville & Nashville was paying out thousands of dollars to have the newspapers publish statements. He exhibited letters written by Mr. Jones to the papers asking them to publish certain statements as news matter, for which they were to be paid."

"Was there anything in your letter that could not be published? I am thinking about writing a reply to that statement to the Ledger,

but, before doing so, I would like to see a copy of the letter you write and which he is handing out. Of course, will make no answer without conferring with you further.

"Yours very truly,
(Signed)

SIDNEY J. BOWIE."

MONTGOMERY, ALA., Aug. 28, 1912.

"Subject: Publicity Campaign.

"Mr. W. L. Mapother, First Vice President, Louisville, Ky.

"DEAR SIR: Please note enclosed letter from Mr. Edwin F. Johnson, of the Johnson-Dallis Advertising Agency dated Atlanta, August 26th, with clipping from the Birmingham Age Herald of Sunday, August 25th, containing Nesbitt's reply to Mr. Bowie, which I note is reproduced from stereotype, and I take it, therefore, will be widely disseminated.

"With return of enclosed letter, I would appreciate it if
16 you would give me any suggestions you care to make as to the reply I should make to Mr. Johnson.

"Nesbitt will, in my opinion, be a candidate for Railroad Commissioner, and I can conceive of nothing more unfortunate than for him to be elected. It will require the combined wisdom and diplomacy of all of us to defeat him. He is 'poisoned' against the railroads, and has not in his entire make up one element of fairness, honesty, or justice, in my opinion. You will recall that he was a member of the firm of Knight-Yancey & Company, and doubtless mixed up in some of its irregularities. * * *

"I have not yet sent the enclosed letter to Mr. Bowie, as I do not know just how he would take it. He might construe it as a criticism upon the manner in which he is writing. I am sure it is not intended as a criticism, but is merely giving expression to a line of policy which Mr. Johnson thinks should be pursued, and if you should think well of it, you might wish to transmit these suggestions to Mr. Bowie. * * *

"After you have considered this letter from Mr. Johnson, I will appreciate it if you will favor me with your comments.

"Yours truly,
(Signed)

GEO. W. JONES,
"District Attorney."

17

"MONTGOMERY, ALA., August 13, 1912.

"Mr. W. L. Mapother, First Vice President, L. & N. R. R. Co., Louisville, Ky.

"DEAR SIR: At the celebration of the opening of the Tuscaloosa Mineral Railroad at Tuscaloosa, the principal speech was made by Mr. A. S. Vandegraaff, a prominent lawyer of Tuscaloosa. In that speech, he took occasion to review some of the development work by Pres. M. H. Smith, and the L. & N. Railroad Company in Alabama, and especially in the mineral district; and also took occasion to criti-

cize the narrow policy of Ex-Governor Comer and his administration, which prevented any development for four years. The speech is pronounced by all who heard it as a master piece,—calculated to do immense good, if disseminated.

"The Editor of the Tuscaloosa News came to see me this morning, with a proposition to publish this article in the daily news of next Sunday, and also in the Weekly Edition on the following Thursday, and I have had suggestions made to me by other citizens of Tuscaloosa that it would be well to have it published. Mr. Leon C. Bradley, one of the Editors of the News, tells me that he believes that if I will have the article published, the Tuscaloosa Board of Trade will buy a large number of copies for distribution, and perhaps publish it in pamphlet form. He brought the manuscript with him, and I read it; it is superb.

"He has made me an extremely low rate of a total of One
18 hundred dollars for publishing the article, consisting of about nine columns, in the Tuscaloosa News of next Sunday, and the weekly News of the following Thursday.

"I recommend that you authorize me to have this done, and will thank you to wire me upon receipt of this whether you will authorize it or not. It is necessary that prompt action be taken, in order that he may set the type for Sunday's issue.

"Yours very truly,

(Signed)

GEO. W. JONES,
"District Attorney."

Mr. Jouett: I desire to make the same objection and give the witness the same advice.

Chairman Meyer: The witness is instructed in the same way by the Commission.

Mr. Jones: The witness, under advice of counsel, declines to answer.

Mr. Folk: I show you Ledger H, folio 454 from the records of the Louisville & Nashville Railroad, showing certain vouchers sent you in Alabama for various amounts, and will ask you how you expended the money represented by these vouchers, taking the first voucher as a beginning.

Mr. Jouett: Out of the record, Governor, is that the same as you have given us here?

Mr. Folk: I think not.

Mr. Jouett: There are quite a considerable number. It will take five or six minutes to look over them. I would like to ask
19 just one question, Mr. Jones. If you have examined that list of vouchers, I will ask you to state first to the Commissioner whether or not they relate to the matters embraced in the twelfth paragraph of this investigation, that is, the Senate Resolution which has been incorporated into the order of investigation.

Mr. Jones: From such examination as I have been able to make of the memorandum, it seems to me the items are embraced in the twelfth section.

Mr. Jouett: I therefore object to the question, Mr. Commissioner, and give the witness the same advice.

Chairman Meyer: And the witness is instructed to answer.

Mr. Jones: Under advice of counsel, the witness declines to answer.

Mr. Folk: You think they are embraced in the 12th section, in respect to money expended for political purposes?

Mr. Jouett: I object to any further discussion of it and give the witness the same advice. He has stated that they come within the 12th section.

Mr. Folk: You will admit the 12th section relates to moneys expended for political purposes?

Mr. Jouett: I do. That is one of the things it relates to.

Mr. Folk: I will ask you, Mr. Jones, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad and of the Nashville, Chattanooga & St. Louis Railway used to the extent of thousands of dollars for political campaign purposes in the State of Alabama.

20 Mr. Jouett: I object to that question and give the witness the same advice.

Chairman Meyer: The witness is instructed to answer.

Mr. Jones: Upon advice of counsel, the witness declines to answer.

Mr. Folk: Do you refuse to answer on the ground that the answer might incriminate you?

Mr. Jones: Upon advice of counsel, I decline to answer.

Mr. Folk: Do you decline to give any reason other than advice of counsel?

Mr. Jones: That is the only reason I have given.

Mr. Folk: You are asserting no personal privilege, are you, as an attorney?

Mr. Jouett: I advise the witness that he has a right to rely upon any privilege that he cares to assert.

Mr. Folk: We would like to know whether it is upon his privilege as an attorney or constitutional privilege.

Mr. Jouett: The evidence being, as we consider it, wholly without the jurisdiction of the Interstate Commerce Commission, we think it is sufficient, upon the previous showing, for the objection to be sustained, and in view of your Honor's overruling the objection, we think it sufficient for the witness to rest upon the advice of counsel, not to answer at all.

Mr. Folk: Do you refuse to give any answer other than the answer, under advice of counsel?

Mr. Jones: I do refuse to give any other answer than that, yes, sir.

21 Mr. Folk: You refuse to say that you decline to answer on the ground that the answer might incriminate you?

Mr. Jones: I refuse to give any answer other than that I have just given, to wit, that I decline to answer, upon advice of counsel.

Mr. Folk: I will ask you, Mr. Jones, do you know of any campaign

funds being expended by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in the State of Alabama through any attorney under a subterfuge of paying the attorney a bill for professional service?

Mr. Jouett: We object to that question and give the witness the same advice.

Chairman Meyer: The same ruling on the part of the Commission.

Mr. Jones: And the same answer on the part of the witness.

Mr. Folk: Mr. Jouett, in order that the record may be clear, do you give the witness advice of counsel not to answer as counsel for the Louisville & Nashville Railroad, or counsel for the witness?

Mr. Stone: Both.

Mr. Jouett: Both.

Mr. Folk: Both.

Mr. Jouett: Yes.

Mr. Folk: So in giving him that advice you act as his counsel as well as counsel for the Louisville & Nashville Railroad?

Mr. Jones: Yes.

22 Mr. Folk: Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Alabama for political purposes and charged upon the books of the carrier to operating expense.

Mr. Jouett: Without knowing anything about it, I object to that question on the same ground heretofore mentioned, and give the same advice to the witness.

Chairman Meyer: The same ruling.

Mr. Jones: The witness makes the same answer.

Mr. Folk: You refuse to answer that question on advice of counsel. Mr. Jones?

Mr. Jones: Yes, sir.

Mr. Folk: I will ask you if you know of any funds of the Louisville & Nashville Railroad of the Nashville, Chattanooga & St. Louis Railway expended in the State of Alabama for political purposes and charged on the books of these carriers or on the books of either carrier to construction?

Mr. Jouett: We make the same objection to that question and give the same advice to the witness.

Chairman Meyer: And the same ruling.

Mr. Jones: And the witness declines to answer on the advice of counsel.

Mr. Folk: You refuse to answer that question on the advice of counsel?

Mr. Jones: Yes, sir.

Mr. Folk: I will ask you, Mr. Jones, if you have any knowledge of funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway used for political campaign purposes in the State of Tennessee.

Mr. Jouett: We make the same objection to that and give the same advice to the witness.

Chairman Meyer: The same instructions.

23 Mr. Jones: The witness declines to answer, under advice of counsel.

Mr. Folk: You refuse to answer that question on the advice of counsel?

Mr. Jones: Yes, sir.

Mr. Folk: Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Tennessee for political campaign purposes and charged on the books of that carrier to operating expenses or construction account?

Mr. Jouett: We make the same objection to that question and give the same advice to the witness.

Chairman Meyer: And the same ruling.

Mr. Jones: The witness declines to answer, on the advice of counsel.

Mr. Folk: You refuse to answer on the advice of counsel?

Mr. Jones: Yes, sir.

Mr. Folk: You can stand aside for the present, Mr. Jones. We will see you later.

(Witness excused.)

That in pursuance of its duty under the law, it was incumbent upon your petitioner to enable it to perform the functions for which it was created to procure the information sought by the questions put to the said witness, George W. Jones, and which he refused to answer;

24 That your petitioner is of the opinion that the said questions and each of them are relevant and material to the matter under investigation, and that an answer to each of said questions is necessary in order to enable your petitioner to discharge its duty, and execute and enforce the provisions of said Act to regulate commerce, and to inform your petitioner as to the manner and method in which the business of the said common carrier is conducted, and to enable your petitioner to obtain full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created;

Wherefore, your petitioner prays that an order or orders be made requiring the attendance before your petitioner of said witness at a time and place to be fixed by said Commission, and the making by him of a full answer to each of the questions respectively declined to be answered by him aforesaid, and to any and all other pertinent questions relating to the subject matter aforesaid which said Commission may require him to answer, and for such other and further relief as may be just and proper in the premises.

INTERSTATE COMMERCE COMMISSION,
By JOS. W. FOLK, *Counsel*.

CITY OF WASHINGTON,
District of Columbia, ss:

I, B. H. Meyer, on oath depose and say, that I am a member of the Interstate Commerce Commission and make this affidavit on behalf of said Commission; That I have read the foregoing petition and know the contents thereof, and that the same is true.

B. H. MEYER.

25 Subscribed and sworn to before me, a notary public within and for the District of Columbia, this 19th day of May, A. D. 1916.

GEO. F. GRAHAM,
Notary Public.

APPENDIX A.

Order.

At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 10th Day of November, A. D. 1913.

Edgar E. Clark, Judson C. Clements, Charles A. Prouty, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, John H. Marble, Commissioners.

No. 6319.

IN RE FINANCIAL RELATIONS, RATES AND PRACTICES OF THE LOUISVILLE & Nashville Railroad Company, Nashville Chattanooga & St. Louis Railway and Other Carriers.

The United States Senate having, by Resolution No. 153, adopted November 6, 1913, directed the Interstate Commerce Commission to investigate, take proof and report to the Senate as soon as practicable—

26 First. What amount of stock, bonds, and other securities of the Nashville, Chattanooga & St. Louis Railway is owned or controlled by the Louisville & Nashville Railroad;

Second. What other railroad or railroads in the territory served by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway have been purchased, leased, controlled, or arrangements entered into with, for the purpose of controlling by either the Louisville & Nashville Railroad or the Nashville & Chattanooga & St. Louis Railway;

Third. Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway serve the same territory in whole or in part, and whether, under separate ownership, they would be competitive to the various points in their territories;

Fourth. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad and

the Nashville, Chattanooga & St. Louis Railway, and any fact or facts showing or tending to show whether these relations restrict competition and maintain fixed rates;

Fifth. The terms of the lease of the Nashville & Decatur Railroad by the Louisville & Nashville Railroad, and what amount, if any, of stock, bonds, and other securities of the Nashville & Decatur Railroad and of the Lewisburg & Northern Railroad are owned by the Louisville & Nashville Railroad or any of its subsidiaries or holding companies;

Sixth. Whether the Nashville & Decatur Railroad, the Lewisburg & Northern Railroad, and the Louisville & Nashville Railroad serve the same territory in whole or in part, and whether, under
27 separate ownership, these railroads would be competitive between various points in their territories;

Seventh. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, and any fact or facts showing or tending to show whether these relations restrict competition and maintain and fix rates;

Eighth. Any fact or facts showing or tending to show (a) the relations between the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Tennessee Midland Railroad, the Tennessee, Paducah & Alabama Railroad, and any other railroads that have been purchased or leased by either or both of said railroad companies, and whether such relations restrict competition and maintain and fix rates; and (b) whether the lease of the Western & Atlantic Railroad by the Nashville, Chattanooga & St. Louis Railway from the State of Georgia, and the arrangement made between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway, by which the former uses the tracks of the said Western & Atlantic Railway, restrict competition, restrain trade, and determine and fix rates;

Ninth. Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee Rivers, and any dock or dock yards at Pensacola,

New Orleans, Mobile, or other seaport establishes a monopoly
28 and restricts competition and determines and fixes rates;

Tenth. Any fact or facts showing or tending to show whether an agreement or arrangement has been entered into between the Louisville & Nashville and other railroad companies for the purpose of preventing competition from entering into any of the territory served by the Louisville & Nashville Railroad, in consideration of the Louisville & Nashville Railroad agreeing not to enter into certain other territory, or in consideration of any other agreement or arrangement;

Eleventh. What amount of stock, if any, the Atlantic Coast Line Company, or Atlantic Coast Holding Company owns in the Louisville & Nashville Railroad, and in the Atlantic Coast Line, and whether the ownership by such holding company of a majority of

stock in both of the aforesaid railroads tends to restrict competition and maintain and fix rates;

Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads; and

Thirteenth. (a) The number of free annual passes; (b) the number of free trip passes; (c) the number of every kind of free passes issued by each of said railroads each year since January 1, 1911, 29 to members of legislative bodies and other public officials or at the request of members of legislative bodies and other public officials; (d) the total mileage traveled upon free passes issued under each of the above classifications; and (e) the amount in money the free passes issued under each of the above-mentioned classifications would equal at the regular rates for such service of each of the above-named railroads;

It is ordered, That a proceeding of inquiry and investigation be, and the same is hereby, instituted into and concerning the several matters and things set forth and referred to in the said resolution.

It is further ordered, That this proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents and papers, as the Commission may hereafter direct; and that the investigation be carried on in the meantime by such other means and methods as may be deemed appropriate.

And it is further ordered, That a copy of this order be served upon each of the following-named railroad companies, and upon any other companies which may hereafter be designated by the Commission:

Nashville, Chattanooga & St. Louis Railway;
 Louisville & Nashville Railroad Company;
 Nashville & Decatur Railroad Company;
 Lewisburg & Northern Railroad;
 Tennessee Midland Railroad Company;
 Tennessee, Paducah & Alabama Railroad;
 Western & Atlantic Railroad; and

Atlantic Coast Line Railroad Company.

30 By the Commission:

(Signed)

GEORGE B. MCGINTY, *Secretary.*

Order.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 20th day of March, A. D., 1916.

No. 6319.

IN RE FINANCIAL RELATIONS, RATES, AND PRACTICES OF THE Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Other Carriers.

Order of Amendment and Consolidation.

Upon consideration of an order dated November 10, 1913, in the above-entitled proceeding, and for good cause shown:

It is ordered, That said order of November 10, 1913, be, and it is hereby, amended by adding after the last paragraph thereof the following:

It is further ordered, That, after the hearings and the investigation authorized by this proceeding, the Commission may issue such order or orders in the matter as may be proper and necessary in the premises.

It is further ordered, That the case before the Commission entitled Docket No. 8488, Luke Lea v. Louisville & Nashville Railroad Company et al., be, and it is hereby, consolidated for hearing with this proceeding, upon one record, at such times and places

31 as the Commission may hereafter direct, that a copy of this order be filed in the record of said Docket No. 8488, and that the parties thereto have due notice of all subsequent proceedings herein.

And it is further ordered, That copies of the original order herein and of this order be served upon all the parties to this proceeding and upon the parties to Docket No. 8488.

By the Commission:

[SEAL.]

GEORGE B. MCGINTY, *Secretary.*

Rule to Show Cause.

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

No. 34351.

INTERSTATE COMMERCE COMMISSION, Petitioner,

v.

GEORGE W. JONES, Respondent.

In the Matter of the Request of the Interstate Commerce Commission for an order requiring the above-named Respondent, George W. Jones, to answer certain questions propounded by the Interstate Commerce Commission.

The Interstate Commerce Commission having duly filed petition to the Judges of the Supreme Court of the District of Columbia for an order or orders requiring the above-named Respondent, George W.

32 Jones, to appear before said Interstate Commerce Commission, at a time and place to be fixed by said Commission, and to make full answers to the questions theretofore refused to be answered by said George W. Jones as set forth in said petition, and to any and all pertinent questions relating to the subject matter set forth in said petition, which said Commission might require him to answer;

It is therefore ordered, that said George W. Jones, the above-named Respondent, be, and he is hereby required to appear before said Supreme Court of the District of Columbia, at a session of said Court to be held in Circuit Court Division No. 2, in the City of Washington, District of Columbia, on the 26th day of May 1916, at 10 o'clock in the forenoon in Circuit Court #2, and then and there to show cause why said petition should not be granted.

WENDELL P. STAFFORD,

*Judge Supreme Court of the
District of Columbia.*

Appearance of Respondent.

Filed May 19, 1916.

In the Supreme Court of the District of Columbia.

No. 34351.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.

GEORGE W. JONES, Respondent.

33 Now comes the Respondent, George W. Jones, through his
counsel, and enters his appearance in the above-entitled
cause.

HENRY L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

Answer of Respondent.

Filed July 7, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.

GEORGE W. JONES, Respondent.

Respondent, George W. Jones, for answer to the petition herein,
says:

He admits that the petitioner is an administrative tribunal, and says that it has no jurisdiction, rights, duties, or powers, except such as are given it by an act of congress, entitled "An Act to Regulate Commerce," approved February 4, 1887, and amendments thereto, and a few other special powers given it by special acts of congress, which, however, do not pertain to anything involved in the present controversy. And respondent says that the power to investigate political questions, or questions as to whether or not common carriers have engaged in political activities, or in attempts to create sentiment in favor of their plans, are not among the powers given to the Interstate Commerce Commission. The powers of that
34 Commission, which is a purely ministerial tribunal, having only the powers given it by act of congress are, with the few exceptions above stated, confined to the enforcement of the Act to Regulate Commerce, and the amendments thereto; and that act, as

amended, does not attempt to regulate the politics or political activities of common carriers, nor the subject of their endeavoring to exclude competitors from their territories.

But respondent says that the sole object of a large part of the questions propounded *by* him by the counsel for the Interstate Commerce Commission, and which he declined to answer, was to delve into questions purely political, and to ascertain whether or not it had been the policy of the Louisville & Nashville Railroad Company to engage in political campaigns and to make contributions of funds to such campaigns; and as to whether or not said Louisville & Nashville Railroad Company had in the past in fact engaged in such political campaigns, or made contribution of funds to the same, and if so, to what extent, and when and where; all of which matters, as respondent is advised, are matters entirely outside the jurisdiction of the Interstate Commerce Commission, and concerning which it had no right to demand that this respondent should answer.

And respondent says that the proceeding before the Interstate Commerce Commission, in which he was interrogated, and out of which the present controversy arises, is a consolidation of two proceedings, principally against the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway,

before the Interstate Commerce Commission, to wit, Nos. 6319 and 8488 on the docket of that Commission; that Luke Lea is the open and sole complainant in the latter, and is the instigator and real complainant in the former, of said two proceedings; that said former proceedings, to wit, No. 6319, was instituted by the Interstate Commerce Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by said Luke Lea, who then was, and now is, a member of said Senate, and who is the open complainant in the other of said two proceedings, to wit, No. 8488, the complaint in which is confined solely to the alleged improper issue of free passes by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

Respondent says that at the time said resolution was introduced into the Senate, as aforesaid, which was in August, 1913, the said Luke Lea, who then was, and now is, the owner and operator of a newspaper in the city of Nashville, Tennessee, was engaged in a bitter attack upon the Louisville & Nashville Railroad Company through the columns of his said newspaper, due to the fact that the said Louisville & Nashville Railroad Company, or certain of its officials, had declined to do for him what he had requested, the result of which was that he began and continued attacking the Louisville & Nashville Railroad Company through the editorial column of his said newspaper; and in the midst of said attack introduced into the Senate of the United States the resolution aforesaid, in August, 1913, which he did not bring to a vote until in November, 1913, at a time when, as respondent is advised, only

36 fourteen members of the Senate were present. Following the entry of the order of the Interstate Commerce Commission, pursuant to said Lea resolution, an extensive examination of the accounts, records, and memoranda of the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway was made by examiners of the Interstate Commerce Commission during the course of which they attempted to examine the correspondence of said Companies, which, however, the Supreme Court of the United States held they were not entitled to do (*United States vs. Louisville & Nashville Railroad Company*, 236 U. S. 318). Pursuant to said resolution the Commission made two elaborate reports to the Senate, viz., on July 7, 1914, and February 16, 1915, covering the matters embraced in said resolution; but no attempt was ever made by the said Commission to have any hearing, or to examine any witnesses, pursuant to its order under the Lea resolution aforesaid, which order was made on November 10, 1913, until more than two years and four months thereafter, and not until after said Luke Lea had made a political race for re-election to the United States Senate for Tennessee in the year 1915, and had been defeated, after which, manifestly through his insistence, and presumably without any knowledge upon the part of the Interstate Commerce Commission of his ulterior motives, the said order of investigation, which had lain dormant for so long a period, was revived, and an attempt was made by means of the questions which respondent declined to answer, to inquire into the question of whether or not the Louisville & Nashville Railroad Company had been taking a part in politics, and especially in the State of Tennessee; the first question, specific as to time and place, asked of the President of the Louisville & Nashville Railroad Company

37 on this subject of political contributions being as to whether or not respondent knew of any funds of the Louisville & Nashville Railroad Company "expended in the State of Tennessee for political campaign purposes during the year 1915"; Tennessee being the State and 1915 the year in which said Luke Lea made his unsuccessful political campaign for his party's nomination as a candidate for the United States Senate.

And respondent submits that the Interstate Commerce Commission has no lawful right, and no power, to command him to answer questions on the subject of political contributions, or other political activities; and to do so is a perversion of the purposes for which the Interstate Commerce Commission was created.

And so as to questions asked of respondent, and which he declined to answer, as to whether or not the Louisville & Nashville Railroad Company attempted to create sentiment in favor of its plans. These are matters wholly outside of the jurisdiction of the Interstate Commerce Commission, and over which it is given no power of investigation or regulation.

Respondent avers and submits that he was, and is, justified in refusing to answer the questions and each of them set forth in the petition, which he did refuse to answer; and that the petitioner, the Interstate Commerce Commission, was, and is, without lawful

power or jurisdiction to investigate or regulate the subjects concerning which said questions were asked, and was, and is, without lawful power or jurisdiction to call upon or require him to answer said questions, or any of them.

38 As to the allegations of the petition concerning the meaning and effect and requirements of the Act to Regulate Commerce, as amended, respondent refers to said Act and its amendments to speak for themselves, but denies the legal effect attributed thereto by the petitioner, as well as other legal conclusions stated in the petition. And respondent denies that, pursuant to its duty under the law, it was incumbent upon petitioner, to enable it to perform the functions for which it was created, to procure the information sought by the questions put to respondent, and which he refused to answer.

Wherefore, having fully answered, respondent prays to be hence dismissed with his costs.

HENRY L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

STATE OF ALABAMA,
County of Montgomery:

Respondent, George W. Jones, says that the statements of the foregoing answer are true, as he verily believes.

GEO. W. JONES.

Subscribed and sworn to before me by George W. Jones, this July 3rd, 1916.

[SEAL.]

UNDINE VAN PELT,
Notary Public, Montgomery County, Alabama.

39 *Motion to Strike Out Certain Portions of Respondent's Answer.*

Filed August 9, 1916.

In the Supreme Court of the District of Columbia.

No. 34351.

INTERSTATE COMMERCE COMMISSION, Petitioner,
v.

GEORGE W. JONES, Respondent.

Now comes the petitioner, the Interstate Commerce Commission, and moves to strike out of the respondent's answer filed herein the following portions, to wit:

Beginning at the second paragraph, line 21, page 1, and extending to the first paragraph, line 6, page 4.

The petitioner states that:

1. The said portions of the answer are irrelevant, immaterial, and not responsive to the averments of the petition.

2. The motives of the United States Senate in adopting the resolution and the motives of the Interstate Commerce Commission in making the order providing for this inquiry can not be the subject of a judicial inquiry.

3. The jurisdiction of the Interstate Commerce Commission and its power to enforce the performance of the legal duty of the carrier to inform the Commission as to the expenditure of its funds is a matter of law and not of fact.

4. The Interstate Commerce Commission has jurisdiction, as a matter of law, to be informed as to all expenditures of an interstate carrier, and this jurisdiction is not defeated because the particular expenditure may be for political purposes, to suppress competition, or to influence public sentiment.

Wherefore the petitioner prays that the said portions of the answer as herein described be stricken out.

JOS. W. FOLK,

Counsel for the Interstate Commerce Commission.

Decree Directing Respondent to Answer Certain Questions.

Filed October 11, 1916.

In the Supreme Court of the District of Columbia.

No. 34351.

INTERSTATE COMMERCE COMMISSION, Petitioner,

v.

GEORGE W. JONES, Respondent.

The Interstate Commerce Commission, having filed its petition to the Judges of the Supreme Court of the District of Columbia, praying for an order requiring the above named respondent, George W. Jones, to appear before said Commission at a time and place to be fixed by said Commission and to make full answers to certain questions heretofore refused to have been answered by said George W. Jones as set forth in said petition, and to any and all other pertinent questions relating to the subject-matter aforesaid which said Commission might require him to answer;

And an order having been duly made by the Honorable Wendell P. Stafford, Judge of said Court, requiring said respondent to appear before the Supreme Court of the District of Columbia, and then and there to show cause why said petition should not be granted; and the said George W. Jones, having duly made answer to said petition and having on August 16, 1916, appeared by counsel before said Supreme Court of the District of Columbia; and the questions involved in said petition and answer

having been duly argued by counsel for respective parties, and the court having been duly advised in the premises;

Now after reading and considering said petition, the answer thereto, and hearing argument of counsel for Petitioner and for Respondent:

It is ordered, adjudged, and decreed that the said respondent, George W. Jones, be, and he is hereby, directed to appear before the Interstate Commerce Commission, upon due notice by said Commission, at a time and place to be designated by it, and make full, true and complete answers and responses to the following questions heretofore propounded by the Interstate Commerce Commission and refused to be answered by said respondent:

Mr. Folk: I will ask you, Mr. Jones, if you distributed in the State of Alabama on behalf of the Louisville & Nashville Railroad, campaign funds favoring the election of a certain candidate?

Mr. Folk: I show you Ledger H, folio 454 from the records of the Louisville & Nashville Railroad, showing certain vouchers sent you in Alabama for various amounts, and will ask you how you expended the money represented by these vouchers, taking the first voucher as a beginning.

Mr. Folk: I will ask you, Mr. Jones, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad and of the Nashville, Chattanooga & St. Louis Railway used
42 to the extent of thousands of dollars for political campaign purposes in the State of Alabama.

Mr. Folk: I will ask you, Mr. Jones, do you know of any campaign funds being expended by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in the State of Alabama through any attorney under a subterfuge of paying the attorney a bill for professional services?

Mr. Folk: Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Alabama for political purposes and charged on the books of the carrier to operating expense?

Mr. Folk: I will ask you if you know of any funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway expended in the State of Alabama for political purposes and charged on the books of these carriers or on the books of either carrier to construction?

Mr. Folk: I will ask you, Mr. Jones, if you have any knowledge of funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway used for political campaign purposes in the State of Tennessee?

Mr. Folk: Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Tennessee for political campaign purposes and charged on the books of that carrier to operating expenses or construction account?

WENDELL P. STAFFORD, *Justice*.

October 11, 1916.

Petition for Appeal.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.

GEO. W. JONES, Respondent.

To the Honorable Wendell Philips Stafford, District Judge:

43 The above named Geo. W. Jones, feeling aggrieved by the decree entered and rendered in the above entitled cause on October 11, 1916, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith. And he prays that his appeal be allowed, citation be issued as provided by law, and that a transcript of the record, proceeding, and documents upon which said proceeding was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, D. C., under the rules of said court in such cases made and provided; and desiring to supersede the execution of such decree, said Geo. W. Jones, here appears to execute bond in such amount as the court may require for such purpose and prays that with the allowance of the appeal a supersedeas be issued.

H. L. STONE,
HELM BRUCE,
E. S. JOUETT.

The appeal is allowed and shall operate as a supersedeas upon the petitioner filing a bond in the sum of \$500, with sufficient sureties to be conditioned as required by law.

WENDELL P. STAFFORD, *Justice*.44 *Order Allowing Appeal, Fixing Bond and for Transcript.*

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.

GEO. W. JONES, Respondent.

This day came respondent, Geo. W. Jones, by counsel, and presented to the court his assignment of errors herein, a petition for ap-

peal to the Supreme Court of the United States, and a supersedeas bond in the sum of Five Hundred (\$500) Dollars with the Royal Indemnity Company as surety, and a stipulation of counsel as to the record to be copied on the appeal, and waiving the issue and service of citation; and it is now ordered that said several papers be, and they are hereby, filed; that said appeal be, and it is hereby, allowed, and that said bond be, and it is hereby approved.

WENDELL P. STAFFORD, *Justice.*

Bond on Appeal.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,

vs.

GEO. W. JONES, Respondent.

Know all men by these presents: That we, Geo. W. Jones, as principal, and the Royal Indemnity Company, a corporation organized under the laws of the State of New York, as surety, are held and firmly bound in the sum of Five Hundred (\$500) Dollars, to be paid to the Interstate Commerce Commission, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

But this obligation is conditioned as follows:

Whereas lately at a term of the Supreme Court of the District of Columbia in a suit pending in the Supreme Court between the Interstate Commerce Commission as petitioner and Geo. W. Jones as respondent, an order and decree was made against the said respondent who has obtained an order allowing an appeal to be taken to the Supreme Court of the United States to reverse the decree aforesaid:

Now, Therefore, the condition of the above obligation is such that if the said Geo. W. Jones shall prosecute his appeal to effect and shall answer all damages and costs if he fails to make his plea good, then the above obligation be void, otherwise to remain in full force and effect.

GEORGE W. JONES,
By E. S. JOUETT, *Agent,*
Att'y in Fact.

O. K.
F. E. C., *Ass't Cl'k.*

ROYAL INDEMNITY COMPANY,
By HENRY G. BEDINGER,
Att'y in Fact.

STATE OF KENTUCKY,
County of Jefferson:

I. G. W. B. Olmstead, Notary Public for Jefferson County, State of Kentucky, hereby certify that E. S. Jouett and H. G. Bedinger, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day and acknowledged that they signed, sealed and delivered said instrument, the said Jouett as attorney for Geo. W. Jones and the said Bedinger for and on behalf of the Royal Indemnity Company, as its attorney in fact, for the uses and purposes therein set forth.

Given under my hand and notarial seal this December 2nd, 1916. My commission expires January 23, 1918.

[SEAL.]

G. W. B. OLMSTEAD,
Notary Public, Jefferson Co., Ky.

Stipulation.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
GEO. W. JONES, Respondent.

47 It is agreed between the parties hereto that in making up this record for the Supreme Court of the United States on the appeal by Geo. W. Jones, the clerk shall copy as the record the entire record herein except the transcript of evidence heard before the Commission which was filed as an exhibit with the petition. The parties agree that said exhibit may be omitted with the understanding that if either party deems the filing of such transcript to be important, it may be filed by such party as a supplemental record at any time before the hearing of the case.

Issue and service of citation on appeal are hereby waived.

A. R. SMITH,
By E. S. JOUETT,
Of Counsel.
JOS W. FOLK,

Counsel for Interstate Commerce Commission.

Assignment of Errors.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
versus
GEO. W. JONES, Respondent.

Now comes the respondent, Geo. W. Jones, in the above entitled cause and files the assignment of errors hereinafter set forth, upon which he will rely in the prosecution of his appeal to the
48 Supreme Court in the above entitled cause from the decree made and entered by this Honorable Court on October 11, 1916, to-wit:

1. The court erred in that, after holding in its opinion in the M. H. Smith case, which applies to this case, that the order of investigation ought to be sufficiently definite to show that it related to some matter concerning which a complaint might be made, or concerning which a question arises under some provision of the Act to Regulate Commerce, it assumed that the order of investigation related to a question which had arisen under some provision of the Act to Regulate Commerce, when, in fact, the order of investigation referred to no such question.

2. The court erred in assuming as a basis of its opinion that the Commission had before it in said investigation the accounts of expenditures for operating expense, or the question of rates.

3. The court erred in taking, as one of the bases of its opinion, the assumption that the order of investigation was not directed to that subject at all, and the assumption adopted by the court came merely from the form of a particular question propounded to the witness while on the stand.

4. The court erred in connection with the fifth question in the M. H. Smith case, relating to the voucher therein described, in adopting as the basis of its opinion the assumption, derived solely from the questions and answers, that the investigation "presents a question arising under a provision of the Act, namely, the provision of section
49 20, which required the carrier in its annual report to state explicitly with regard to its operating and other expenses," when in fact no such question was suggested in the order of investigation.

5. The court erred in assuming as the basis of its opinion that "a question arising under the provisions of the Act" referred to in section 13 thereof and which the court held correctly must have actually arisen, can arise during a hearing by a mere interrogatory put to a witness without any reference in the order of investigation to the subject matter thereby suggested, whereas the Act meant that

such a question, having previously arisen, must have been set out in the order of investigation as the subject of the investigation; the error of the court in this respect being illustrated by the following quotation from that part of its opinion, where it was discussing interrogatory No. 5, to M. H. Smith in his case, relating to a specific voucher:

"Does not this interrogatory present a question arising under a provision of the Act, viz., the provision in section 20 which requires the carrier in his annual report to state explicitly with regarding to its 'operating and other expenses'? When the carrier is required by the Act to furnish just such information as this, when the examiners have been refused the information, and when it may be clearly seen that the information may be necessary to enable the Commission to deal intelligently with the question of rates, and more especially when the account and voucher appear in a form that could not be approved by the Commission and could apparently be adopted only as a method of concealing the true character of the expenditure, how can it fairly be said that no question is presented arising under any provision of the Act."

6. In reaching its conclusion with reference to each of the other interrogatories set out in the petition the court committed the same fundamental error of assuming that the "question arising under the Act", which alone could give it jurisdiction, was a question—

50 whether relating to rates or the proper keeping of accounts— which did not have to be set out in the order of investigation as the subject matter thereof, but could arise, and give jurisdiction, in the midst of a hearing out of a mere interrogatory to a witness which suggested a question or subject matter within the jurisdiction of the Commission.

7. The court erred in holding, in effect, that under the order of the Interstate Commerce Commission, involved in this case, respondent, as a witness, could lawfully be required to answer any question that might be propounded to him as to expenditures for political purposes, or to keep out competition, or as to how such expenditures were charged in its accounts, because such question might have a bearing upon the question of the reasonableness of the rates of the carriers involved, or the correctness of their accounts, when it did not appear that any question had arisen as to the reasonableness of such rates, or the correctness of such accounts, or that the Commission had ordered, or was making any investigation of such matters.

8. The court erred in holding that the amendment of 1910 of the Act to Regulate Commerce empowered the Interstate Commerce Commission, through its representative, in the proceedings involved and referred to in the petition herein, to require respondent, as a witness, to answer the questions propounded to him, because they involved the expenditures of the carrier's funds, and so affected the question of the reasonableness of its rates, and also involved its methods of accounting, when it does not appear that the Commission had ordered, or entered upon, any proceeding of inquiry or investigation, either as to the reasonableness of carrier's rates, or as

51 to the correctness or propriety of its accounting.

9. The court having held that the amendment of 1910 of

the Act to Regulate Commerce gives the Commission power to proceed by way of inquiry and examination of witnesses as to any matter or thing concerning which a question has arisen under any of the provisions of the Act, or relating to the enforcement thereof, erred in then holding that the respondent, as a witness in such proceeding, could be compelled to answer questions as to expenditures for political purposes, or to keep out competition, and as to how they were charged in the carriers' accounts, on the ground that such questions might have a bearing upon the reasonableness of the carrier's rates, or its methods of accounting, when it did not appear that any question had arisen as to the reasonableness of its rates or its method of accounting.

10. The court erred in holding, in effect, that the matter under investigation by the Interstate Commerce Commission in the proceeding involved herein, is to be determined by the question, or questions, asked of a witness by the representative of the Commission conducting the examination, and not merely by the order of the Commission instituting or directing the proceeding of inquiry and investigation.

11. The court erred in holding that the real object of the inquiry in the twelfth paragraph of the Commission's order, involved herein, was, not to discover political activities of the carrier, but to discover the amount and real nature of its expenditures.

12. The court erred in not dismissing the petitioner's petition, for the reason that the order of investigation failed upon its face to show that it related to any matter or thing concerning which a complaint was authorized to be made, or concerning which any question had arisen under any of the provisions of the Act to Regulate Commerce, or relating to the enforcement of any of the provisions of said Act.

13. The court erred in not dismissing the petition, for the reason that all the questions which the respondent, as a witness, refused to answer, were questions called for only under the twelfth paragraph of the Commission's order of investigation, and that the matters ordered to be investigated by that paragraph are not matter which the Commission is legally entitled to investigate.

14. The court erred in ordering and directing respondent, Geo. W. Jones, to appear before the Interstate Commerce Commission and to answer the question which in, and by said order and decree, he is directed to answer.

15. As to each and every one of the questions which respondent is, by said order and decree, ordered and directed to answer, the court erred in directing him to answer the same, and to produce the evidence therein called for.

16. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 1. I will ask you, Mr. Jones, if you distributed in the State of Alabama on behalf of the Louisville & Nashville Railroad, campaign funds favoring the election of a certain candidate?"

17. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 2. I show you Ledger H, folio 454 from the records of the Louisville & Nashville Railroad, showing certain vouchers sent you in Alabama for various amounts, and will ask you how you expended the money represented by these vouchers, taking the first voucher as a beginning."

53 18. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 3. I will ask you, Mr. Jones, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad and of the Nashville, Chattanooga & St. Louis Railway used to the extent of thousands of dollars for political campaign purposes in the State of Alabama."

19. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 4. I will ask you, Mr. Jones, do you know of any campaign funds being expended by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in the State of Alabama through any attorney under a subterfuge of paying the attorney a bill for professional services?"

20. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 5. Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Alabama for political purposes and charged on the books of the carrier to operating expense."

21. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 6. I will ask you if you know of any funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway expended in the State of Alabama for political purposes and charged on the books of these carriers or on the books of either carrier to construction?"

22. The court erred in ordering and directing respondent to answer the following question, to-wit:

"No. 7. I will ask you, Mr. Jones, if you have any knowledge of funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway used for political campaign purposes in the State of Tennessee."

23. The court erred in ordering and directing respondent to answer the following question, to-wit:

54 "No. 8. Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Tennessee for political campaign purposes and charged on the books of that carrier to operating expenses or construction account?"

Wherefore respondent prays that the judgment herein be reversed.

H. L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Solicitors for Def't.

Præcipe.

Filed December 4, 1916.

In the Supreme Court of the District of Columbia.

#34351. Eq.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
GEO. W. JONES, Respondent.

The clerk will please copy, and certify to the Supreme Court of the United States, as the record on appeal, the entire record in the lower court in the above styled cause, except the transcript of evidence of proceedings of investigation by the Interstate Commerce Commission, which transcript is made an exhibit with the petition in this proceeding: the parties, by stipulation, having agreed that said exhibit need not be copied as a part of the record.

H. L. STONE,
HELM BRUCE,
EDWARD S. JOUETT,
Counsel for Respondent.

55 Service of the foregoing præcipe is hereby acknowledged
this Dec. 4, 1916.

JOS. W. FOLK,
Chief Counsel of Interstate Commerce Commission.

56 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 55, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 34351 in Equity, wherein Interstate Commerce Commission is Petitioner and George W. Jones is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 11th day of December, 1916.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: File No. 25,644. District of Columbia Supreme Court. Term No. 814. George W. Jones, appellant, vs. Interstate Commerce Commission. Filed December 11th, 1916. File No. 25,644.

10

No. 340

Office Supreme Court, U. S.
FILED
SEP 22 1917
JAMES D. MAHER
Clerk

SUPREME COURT OF THE UNITED STATES

GEORGE W. JONES, - - - - - Appellant,

versus

INTERSTATE COMMERCE COMMISSION, Appellee.

BRIEF FOR APPELLANT.

EDWARD S. JOUETT,
HELM BRUCE,
Attorneys for Appellant.

HENRY L. STONE,
Of Counsel.
SEPTEMBER 10, 1917,



SUPREME COURT OF THE UNITED STATES

GEORGE W. JONES, - - - - - *Appellant,*

versus

INTERSTATE COMMERCE COMMISSION, - - *Appellee.*

BRIEF FOR APPELLANT.

This case is exactly similar to the case of Milton H. Smith v. Interstate Commerce Commission, with which it was heard. It is an appeal from a decree of the Supreme Court of the District of Columbia ordering George W. Jones to answer certain questions propounded to him in the course of an investigation by the Interstate Commerce Commission; the investigation being the same as that in which Milton H. Smith was called and directed to answer certain questions.

The questions asked of George W. Jones, and which the decree ordered him to answer, are as follows:

“Mr. Folk: I will ask you, Mr. Jones, if you distributed in the State of Alabama on be-

half of the Louisville & Nashville Railroad, campaign funds favoring the election of a certain candidate?

Mr. Folk: I show you Ledger H, folio 454 from the records of the Louisville & Nashville Railroad, showing certain vouchers sent you in Alabama for various amounts, and will ask you how you expended the money represented by these vouchers, taking the first voucher as a beginning?

Mr. Folk: I will ask you, Mr. Jones, whether or not you have personal knowledge of funds of the Louisville & Nashville Railroad and of the Nashville, Chattanooga & St. Louis Railway used to the extent of thousands of dollars for political campaign purposes in the State of Alabama?

Mr. Folk: I will ask you, Mr. Jones, do you know of any campaign funds being expended by the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway in the State of Alabama through any attorney under a subterfuge of paying the attorney a bill for professional services?

Mr. Folk: Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Alabama for political purposes and charged on the books of the carrier to operating expenses?

Mr. Folk: I will ask you if you know of any funds of the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway expended in the State of Alabama for political purposes and charged on the books of these carriers or on the books of either carrier to construction?

Mr. Folk: I will ask you, Mr. Jones, if you have any knowledge of funds of the Louisville & Nashville Railroad or the Nashville, Chatta-

nooga & St. Louis Railway used for political campaign purposes in the State of Tennessee?

Mr. Folk: Do you know of any funds of the Louisville & Nashville Railroad expended in the State of Tennessee for political campaign purposes and charged on the books of that carrier to operating expenses or construction account?"

The conclusion which this court shall reach as to whether or not Milton H. Smith shall be required to answer the questions which he was ordered to answer in this investigation will necessarily lead the court to reach the same conclusion as to the questions propounded to George W. Jones.

We ask that the judgment requiring him to answer the questions contained in the decree be reversed.

EDWARD S. JOUETT,

HELM BRUCE,

Attorneys for Appellant.

HENRY L. STONE,

Of Counsel.

September 10, 1917.



11
Office Supreme Court, U. S.

FILED

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JAMES D. MAHER

CLERK

No. 340.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

GEORGE W. JONES, APPELLANT,

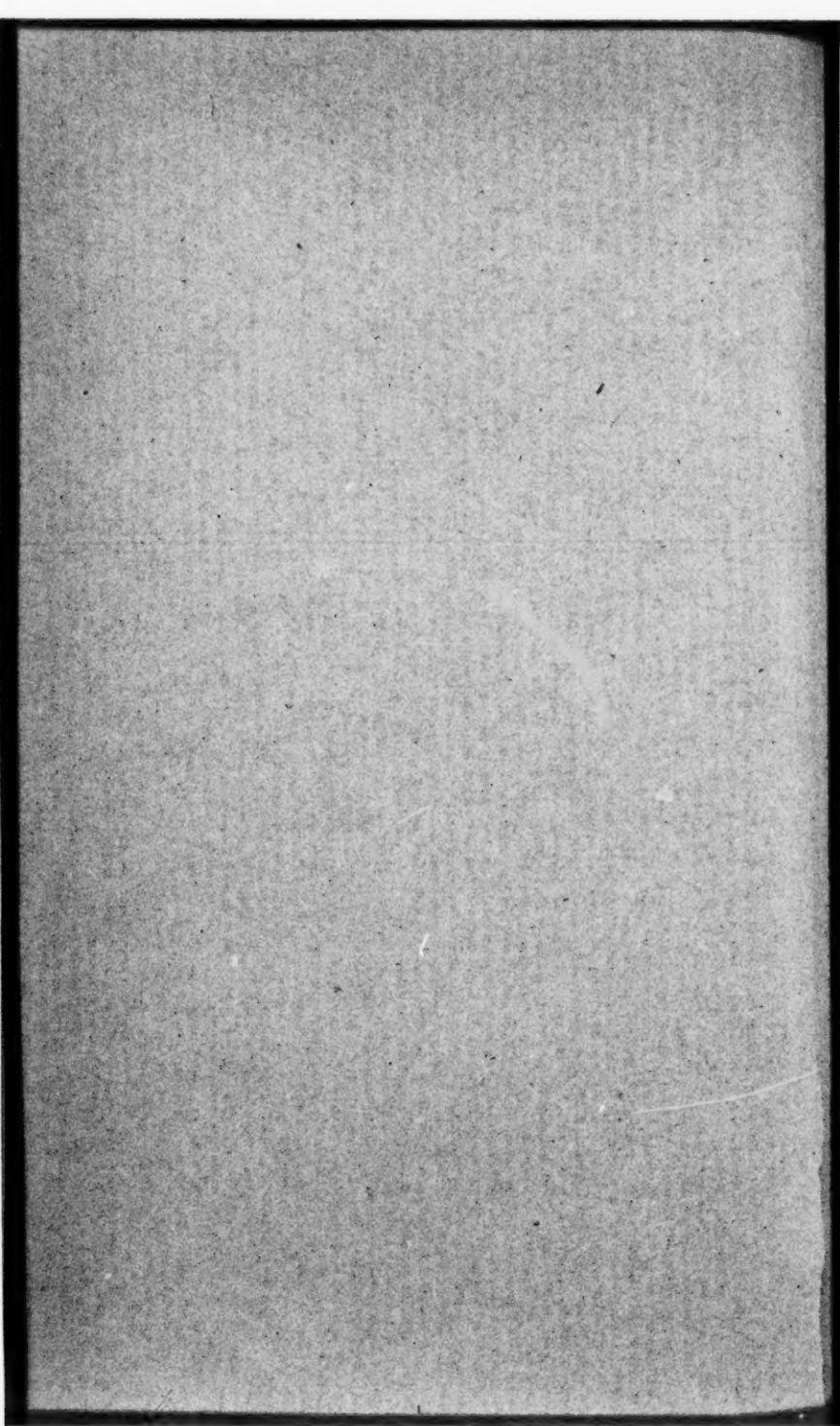
v.

INTERSTATE COMMERCE COMMISSION, APPELLEE.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

JOB. W. FOLK,

Counsel for Interstate Commerce Commission.



In the Supreme Court of the United States

OCTOBER TERM, 1917.

GEORGE W. JONES, APPELLANT,	} No. 340.
v.	
INTERSTATE COMMERCE COMMISSION, appellee.	

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

This appeal is from a decree of the Supreme Court of the District of Columbia directing the appellant to answer certain questions propounded by the Interstate Commerce Commission, hereinafter called the Commission, which appellant had refused to answer, at a hearing held by the Commission in an investigation of certain matters pertaining to the business of the Louisville & Nashville Railroad Company and other carriers. The questions which were asked the appellant, and which he refused to answer, related to expenditures of the funds of the carrier, and the case is exactly similar to the case of *Milton H. Smith v. Interstate Commerce Commission*, No. 337. The conclusion which this Court shall reach as to whether or not Milton H. Smith should be required to answer the questions which he was ordered to an-

swer will necessarily lead the Court to the same conclusion as to the questions propounded to appellant herein.

We ask that the decree requiring appellant to answer the questions be affirmed.

Respectfully submitted.

JOS. W. FOLK,

Counsel for Interstate Commerce Commission.